

**Fiscal Year 2010 DEQ Fee Proposal
Storm Water Permit Fees
November 3, 2008**

Overview - Storm Water Program

The federal Clean Water Act (CWA) requires that all discharges to the surface waters of the United States be authorized by a federal permit under the National Pollutant Discharge Elimination System (NPDES). The Michigan Department of Environmental Quality (MDEQ) has the authority for administering this program in Michigan. Mandated by Congress under the CWA, the NPDES Storm Water Program is a comprehensive program described in three general permitting areas – Construction Site Storm Water Discharge permits, Industrial Storm Water Discharge permits, and Municipal Separate Storm Sewer Discharge permits. NPDES permits prevent harmful pollutants from being discharged by storm water runoff into rivers, lakes, and wetlands.

- **Construction Site Storm Water Discharge Permits:** The MDEQ currently utilizes Permit-by-Rule for NPDES authorization. Construction activities of five acres or more with a point source discharge to the waters of the state must submit a Notice of Coverage (NOC) and obtain coverage under Permit-by-Rule. The local government agency must issue a Soil Erosion and Sedimentation Control (SESC) Permit prior to submitting the NOC Application. These permits provide program oversight to ensure the impacts from soil erosion and sedimentation from construction activities do not impact the surface waters of the state. The MDEQ issues an average of 750 permits each year in this category.

In addition, construction activities that disturb one to five acres must have permit coverage. However, submittal of the NOC is not required for regulated construction activities that disturb one to five acres. These sites have automatic coverage under Permit-by-Rule if they have obtained coverage under the SESC Program, in accordance with Part 91, Soil Erosion and Sedimentation Control, of the National Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). Although there are no application requirements, the land owner or easement holder must still comply with the requirements of Permit-by-Rule. There is currently no fee required for these one to five acre point source discharges. An estimated several thousand of these sites have permits.

- **Industrial Storm Water Discharge Permits:** An industry must apply for a storm water permit if storm water associated with industrial activity at the facility discharges to a surface water. There are three types of Industrial Storm Water Discharge permits available in Michigan: a generic baseline general permit, a general permit with monitoring requirements, or a site-specific individual permit. There are approximately 3,300 facilities with storm water discharge authorization. Michigan's Industrial Storm Water Discharge permit requires that facilities obtain a certified operator who supervises and controls the control structures at the facility, eliminates any unauthorized non-storm water discharges, and develops and implements a Storm Water Pollution Prevention Plan for their facility, including structural and nonstructural control measures.
- **Municipal Separate Storm Sewer System Discharge permits:** Municipalities with Separate Storm Sewer Systems (MS4) which service a population greater than 100,000 must obtain a permit as part of the Phase I Storm Water Discharge Permit Program. Six communities in Michigan met the population criteria: Ann Arbor, Flint, Grand Rapids, Sterling Heights, the University of Michigan (Ann Arbor), and Warren. In addition, the MDEQ required permits for the Michigan Department of Transportation for their storm

sewer systems associated with the above communities. Phase II of the storm water regulations expanded the number of municipalities required to obtain a permit. Phase II included all municipalities in the defined urbanized areas of Michigan that owned or operated an MS4 with a discharge to surface waters. The number of permittees in this program is now about 330. MS4 permits are focused on reducing impacts to surface waters from the effects of urbanization through implementing the MS4 Permit and meeting Water Quality Standards (WQS) by restoring surface water bodies.

The core Program includes the following elements:

<u>Core Program Element</u>	<u>FTEs</u>
Permit issuance and development	3
Compliance	23
Enforcement	2
Total	28

Program Funding

In 2004, Part 31, Water Resources Protection, of the NREPA changed the storm water discharge permit fees and implemented the MDEQ Storm Water Discharge Permit Program under Part 31. It authorized fee structures, with two levels of annual fees plus a one-time application fee for construction activity, beginning in 2004 until October 1, 2009. This proposal renews the storm water discharge permit fees to continue the MDEQ's Storm Water Discharge Permit Program. The fees should be equitable and proportional to the relative cost of implementing the programs. The fee structure proposed provides adequate revenue to support a core program to protect surface water. The structure for administrative responsibilities, such as billing and collecting fees, has already been established and is maintained by this proposal.

The storm water permit fees generated \$1.84 million in FY07. The renewal is for \$3.740 million. The proposed increase is related to the manner in which the fees were assessed in the 2004 fee legislation, not to a program expansion.

The following table summarizes the storm water discharge permit fees that were either invoiced or received with an application (NOC) by the MDEQ since FY04.

Construction Site Storm Water:

<u>Year:</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Permits/year:	975	817	563	NA
Fee:	\$400	\$400	\$400	\$400
Revenue:	\$390000	\$326800	\$225200	NA

Industrial Storm Water:

<u>Year:</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Permits:	3573	3535	3506	3326
Fee:	\$260	\$260	\$260	\$260
Revenue:	\$928,980	\$919,000	\$911,560	\$864,760

Municipal Storm Water:

Year:	2005	2006	2007	2008
Permittees:	425	421	332	332
Revenue:	\$896,500	\$922,000	\$700,000	\$700,000

Total fee revenue: \$2,215,480 \$2,167,800 \$1,836,760

Workload Evaluation

A detailed workload analysis was done in 2004 for the storm water fee package. This analysis showed 30 FTEs were needed to support the core program. The core program was found to be able to be completed with 28 FTEs instead of the projected 30 FTEs.

For the current proposed fee package, the MDEQ has reexamined the workload and determined that 28 FTEs is adequate to meet the core program needs. This is possible through the efficiencies gained by the MDEQ since 2004 in construction storm water, and the reduction of MS4 permittees. The MDEQ has maintained timely permit issuance effort to meet the demand. However, the current fees do not adequately fund the 28 FTEs necessary to implement the core program. Without increased fees to support the necessary FTES, fewer inspections, and compliance and enforcement actions will be carried out.

Proposed Program Funding Change

The MDEQ must extend the sunset provision for the storm water fees beyond October 1, 2009, and increase the storm water fee revenue by \$1.9 million, for an annual target revenue goal of \$3.738 million, to ensure that the WB can maintain a core program which consists of 28 FTEs for the program.

A. FY2010

The estimated funding need for FY2010 supports the core program as follows:

$$28 \text{ FTEs} \times \$133,500/\text{FTE}^* = \$3,738,000$$

*Includes a 25 percent assessment for Central Administration, Rent and Department of Information Technology. See attached document for an explanation of these costs.

B. The MDEQ calculated the FY2010 funding estimate using the existing fee structure:

General Funds = \$0

- Estimated current fee revenue: \$1,840,000
- Total funding = \$1,840,00
- The funding shortfall is estimated to be \$1,898,000

Inflation considerations

After enacting the fees for FY04, the rate of inflation was 1.3, 2.5, and 3.7 percent for 2004, 2005, and 2006, respectively, using the Detroit Consumer Price Index. Using these rates of inflation and an estimated rate of 3 percent for 2008-2010 results in a cumulative increase of about 18 percent for the fees:

C. The MDEQ evaluated different fee structures that would generate the funding needed for support of 28 FTEs in FY2010. Based on these evaluations, the MDEQ recommends the following fee structure for the storm water fees:

1. **Construction Site Storm Water Application Fee:** For this activity, all Construction Sites over five acres, regardless of size, would be assessed an application fee of \$1425 per site. This approach generates about \$1,050,000 per year, based on the last three-year average of 750 sites per year. No fees for construction sites of one to five acres.

2. **Industrial Storm Water Annual Fee.** For this annual fee, the MDEQ recommends an increase of the annual fee to \$500 per year. This is commensurate with the amount of effort the MDEQ typically puts into this area. This will generate about \$1,650,000 per year.

3. **Municipal Separate Storm Sewer Annual Fees:** For these annual fees, the MDEQ recommends an increase of 50 percent in all annual fees. This results in the following annual fees:

City, Village, Township population:

Under 1000 = \$750

1000 – 3000 = \$1,500

3001 – 10,000 = \$3,000

10,001 – 30,000 = \$4,500

30,001 – 50,000 = \$6,000

50,001 – 75,000 = \$7,500

75,001 – 100,000 = \$9,000

Over 100,000 = \$10,500

County = \$4,500

Others = \$750

This annual fee structure generates about \$1,040,000 per year.

The following table shows the current and the proposed fee increases to raise \$3,740,000.

Storm Water Fees

Current Sunset – October 1, 2009

Type	Description		Current Fee	Proposed Fee
Construction	A one-time application fee is required for a permit related solely to a site of construction activity for each permitted site. The fee shall be submitted by the construction site permittee along with his or her Notice of Coverage (NOC).		\$400	\$1,425
MS4	MS4 Population Range	0 – 1,000	\$500	\$750
		1,001 – 3,000	\$1,000	\$1,500
		3,001 – 10,000	\$2,000	\$3,000
		10,001 – 30,000	\$3,000	\$4,500
		30,001 – 50,000	\$4,000	\$6,000
		50,001 – 75,000	\$5,000	\$7,500
		75,001 – 100,000	\$6,000	\$9,000
		Greater than 100,000	\$7,000	\$10,500
	Counties		\$3,000	\$4,500
	Others		\$500	\$750
Industrial	An annual fee is required for a permit related solely to a storm water discharge associated with industrial activity or from a commercial site for which the MDEQ determines a permit is needed.		\$260	\$500

*The total generated by this fee proposal is \$3,740,000, which is the amount needed to fund the program for FY2010. This DRAFT fee proposal includes a provision for an annual inflation adjustment based on the Detroit Consumer Price Index (CPI) with no sunset date for this fee. However, the fee proposals included in the FY2010 Executive Budget may not include a CPI adjustor. In that event, the MDEQ proposes instituting a sunset date for this fee.

Evaluation of Need for Proposed Funding Change

Without an extension of the current sunset of the storm water fees, the WB will be unable to administer the core program beyond October 1, 2009, thus jeopardizing its NPDES authority for administering this program in Michigan, resulting in adverse impacts on the environment and the potential loss of economic growth.

Further, even with the extension of the sunset date, without the proposed fee increase, the program's overall effectiveness is impacted. Examples of the negative effects of a reduced program include:

- Additional impacts from the program activities discussed above include the prevention of future adverse environmental impacts. The NPDES permit program has been effective in controlling and preventing pollution before it becomes a major problem. An example is controlling phosphorus from dischargers so that downstream lakes and impoundments do not experience algal blooms or unacceptable dissolved oxygen levels. Other examples include avoiding sediment contamination or fish consumption advisors by regulating pollutants. Reduced effort in the program could result in expensive cleanup efforts at a later date that would take years to remediate.
- Without the fee increase, the program reduces its compliance efforts, including facility inspections. A credible compliance program is necessary to assure that water dischargers obtain and follow their permits. The MDEQ also implemented a compliance initiative to address facilities that did not have a discharge permit but needed one. Without continued effort in this area, unpermitted facilities will continue to have an unfair advantage over permitted facilities because treatment to meet state standards is not provided.
- Delay in the reissuance of permits needed to incorporate up-to-date requirements in permits. Timely reissuance of permits incorporates new water quality standards and treatment technology standards. Permit term limits are set at five years, based on federal state regulations. The MDEQ also considers the most recent water quality monitoring in setting appropriate permit requirements. Failure to reissue permits in a timely manner compromises the water quality improvements the program has achieved.
- Municipalities and industries rely on timely permit processing for expansions or new facilities in the state. Businesses cannot build or expand in a timely fashion unless permits required by state law are issued in a timely fashion. This could result in businesses choosing to locate outside of Michigan.
- Without adequate funding to continue the core program, the USEPA commitments for permit reissuance are not met, which jeopardizes federal funding and program delegation. The regulated community has long maintained its desire that the MDEQ administer the NPDES program rather than the USEPA.

Improvements, Efficiencies, and Program Reductions

Since the fees were revised by Act 91 of 2004, the following steps improved the NPDES Storm Water Discharge Permit Program.

Storm Water Permit Issuance and Program Improvements

The MDEQ implemented efficiencies in the process and thus continued with no NPDES permit backlog since 1999. This process includes permits being on the same watershed reissuance schedule, streamlining the MDEQ's resources, and integrated protection of the waters of the state. Additional internal actions taken to improve efficiencies included:

- Conversion from paper records to electronic records in the MDEQ's databases. This saves the program time and materials.
- Updating permitting procedures to consolidate, clarify, and streamline storm water permitting procedures.
- Revise and clarify the fee collection and cash handling procedures for storm water fees, including establishing the WB Fee Committee and developing a WB procedure for fee collection and follow-up activities.
- Develop and implement a uniform procedure for storm water permit application letters, to improve the reissuance of permits.
- Develop and implement a uniform procedure for storm water permits that expire, to improve the accuracy of the database and protect the environment.
- Review the storm water permit formats, with the intent to make the formats similar to improve communication and understanding by permittees and the DEQ staff.
- Review and revise the storm water permit application, to improve permit applications and decrease processing time. A Permit Application Workshop was held in February 2008 with the regulated community to review the revisions, reduce permittee time spent on applying, and improve the quality of applications.
- Align inspection planning (two years prior to permit issuance) for up-to-date independent compliance information and to address issues of noncompliance prior to permit issuance.

Compliance Improvements

The MDEQ completed a Compliance Initiative to address facilities that needed a discharge permit but never obtained one before. This initiative started as a result of the groundwater discharge permit program, but also included surface water discharges under NPDES. In 2006, the second initiative began, aimed at gaining compliance from facilities that discharged to the waters of the state but never obtained the necessary permit from the MDEQ. The initiative's goal was an opportunity for these dischargers to voluntarily pursue compliance with the State of Michigan wastewater discharge laws by obtaining the proper permit and immediately placing them into the MDEQ's compliance tracking system via an administrative consent order. The initiative expired on September 30, 2006. As a result of this initiative, 271 facilities entered into the initiative, with 133 under the storm water permit program.

The MDEQ consolidated inspection tracking and follow-up actions into one database. Previously each district tracked what they did separately, making it difficult to evaluate workloads and trends. We also captured deficiencies found during inspections in our database. This helps us determine how to address problems (if many similar problems are found, we can target training to address the problem).

Align terminologies and definitions for types of inspections (reconnaissance inspections, compliance evaluation inspections, and compliance sampling inspections).

Internet Access and Electronic Efficiencies

The MDEQ implemented a Web access to permit information. This allows the public access to permit-related information directly on the Web, instead of requesting the information and/or filing a FOIA request. This also reduces the amount of staff time spent responding to these requests.

The MDEQ implemented electronic Public Noticing on the DEQ Web site. This allowed placement of the draft permit, permit applications, and related documents on the Web site for immediate access by the public. This proved to be very successful in disseminating information very rapidly to the interested public, with subsequent savings from newspaper notices. This also reduces the amount of staff time spent responding to requests for these documents. Accessing permit-related information directly on the Web is more time- and cost-effective than requesting the information and/or filing a FOIA request.

The MDEQ implemented the use of e-mail to send permit-related documents to applicants, instead of paper copies via mail services. This reduces time, mailing costs, and materials in this program, and provides more timely information to the applicant and interested parties.

Program and Training Consolidation

The MDEQ restructured field activities to improve the efficiencies in our activities, decrease confusion among the regulated community, and reduce staff time required to conduct Part 91 audits. In addition, the MDEQ consolidated training for both construction programs into one program.

Comments and Follow-Up Stakeholders Meeting

All interested parties are invited to present comments on the proposed Storm Water fees. Comments may be submitted to:

Mark Fife
Permits Section
Water Bureau
Department of Environmental Quality
P.O. Box 30273
Lansing, Michigan 48909-7773
Telephone: 517-241-18993
e-mail: fifem@michigan.gov

A follow-up stakeholders meeting will be held to seek additional input on the proposed fees. The public meeting will be held 9:00 a.m. to 10:30 a.m. on December 1, 2008, at Constitution Hall, Con Con Rooms A & B, 525 West Allegan Street, Lansing, Michigan.

Attachment
Explanation for Including a
Central Support and DIT Overhead Costs Factor
in
DEQ Fee Structures
12/21/06 Revised

Purpose

This paper provides the explanation for why inclusion of a standard factor for central administration, terminal leave, and the Department of Information Technology (DIT) overhead costs is essential in every DEQ fee structure.

Definition

Central administration and DIT overhead costs consist of the following items of expenditure:

- All salary and wage costs, office supply costs, contract costs, and travel costs for the Executive Division and Department Support staff that support department-wide operations, including:
 - Director, Deputy Directors, central policy staff, legislative liaison, information officer, and support staff in the Executive Division
 - Budget, Business Services, Financial Management, purchasing, vehicle management, district office support, and Human Resources (personnel) functions that support department-wide operations.
- All salary and wage costs, office supply costs, travel costs, computer desktop support costs, tele- and data-communication costs, computer equipment costs (e.g., servers), and maintenance and application development costs provided by DIT to support MDEQ department-wide operations.
- All rent and building occupancy costs for housing all DEQ staff.
- Payoffs for terminal leave accruals made to employees who leave the MDEQ are treated as an administrative expense and allocated to all MDEQ funding sources. This terminal leave allocation is based on the funding of personnel costs in the department. It averaged 1 percent of the total payroll costs each year.

Funding for Overhead Costs in the MDEQ Budget

The MDEQ's budget always funded central administration, terminal leave, and DIT overhead costs. Historically, one of the primary sources of funding for these overhead costs was General Fund-General Purpose (GF-GP) monies; however, GF-GP funding in the MDEQ's budget declined significantly over the last five fiscal years. As recently as FY02, GF-GP monies funded 28 percent of the MDEQ's budget, compared to only 9 percent of the budget being funded by GF-GP in FY07. (See Attachment #2.) Most of the remaining GF-GP funding provides state match to earn federal grant monies.

Consequently, as GF-GP funding for the MDEQ declined, the funding for central administration and DIT overhead costs shifted to a much greater reliance on state-restricted fund sources, none of which were structured to provide sufficient revenue to support overhead costs. (See attached chart.) In several cases, state-restricted fund sources with available 'healthy' balances replaced lost GF-GP revenues, resulting in an inequitable allocation of overhead costs across state-restricted fund sources.

The annual MDEQ budget is supported by approximately 55 separate state-restricted revenue sources. The state-restricted fund revenue sources include all permit fees, bond revenue (e.g., CMI—Clean Michigan Initiative), unredeemed bottle deposit revenue, oil and gas severance tax revenue, and refined petroleum fund revenue). When the statutes establishing these restricted fund sources (fees, et al) were established, the fee schedules and funding assumptions were based only on supporting the immediate cost of the program staff conducting the program because there was adequate GF-GP funding available to support major portions of the central administration and DIT overhead costs for the MDEQ.

NOTE: DIT was established in 2002, with specific funding first appropriated for the department in FY03.

Why must a factor for Central Support and DIT Overhead Costs be included in the MDEQ's fee structures?

The simple explanation is that the funding for overhead is to be allocated/spread equitably/fairly across all fund sources that support department programs. Thus, the fee structures that produce revenue for the state-restricted funds must include a factor sufficient to support overhead costs.

The current allocation of state-restricted funding is significantly not equitable across the restricted fund sources. The state-restricted revenue fund sources with large fund balances (e.g., Refined Petroleum Fund, Oil and Gas Severance Tax, Cleanup and Redevelopment Fund, etc.) are paying more than their equitable/fair share of the overhead costs. In contrast, fee-based state-restricted fund sources are paying significantly less than their fair share of overhead costs.

The MDEQ financial management staff developed a responsible methodology for the fair and equitable allocation of central support and overhead costs across all fund sources. This methodology is based on the staffing supported by the various fund sources throughout the MDEQ. In order for the fee-based state-restricted revenue sources to support their fair share of central support and IT overhead costs, it is necessary to include a factor for these costs in each MDEQ fee structure. The factor has been determined to be 25 percent.